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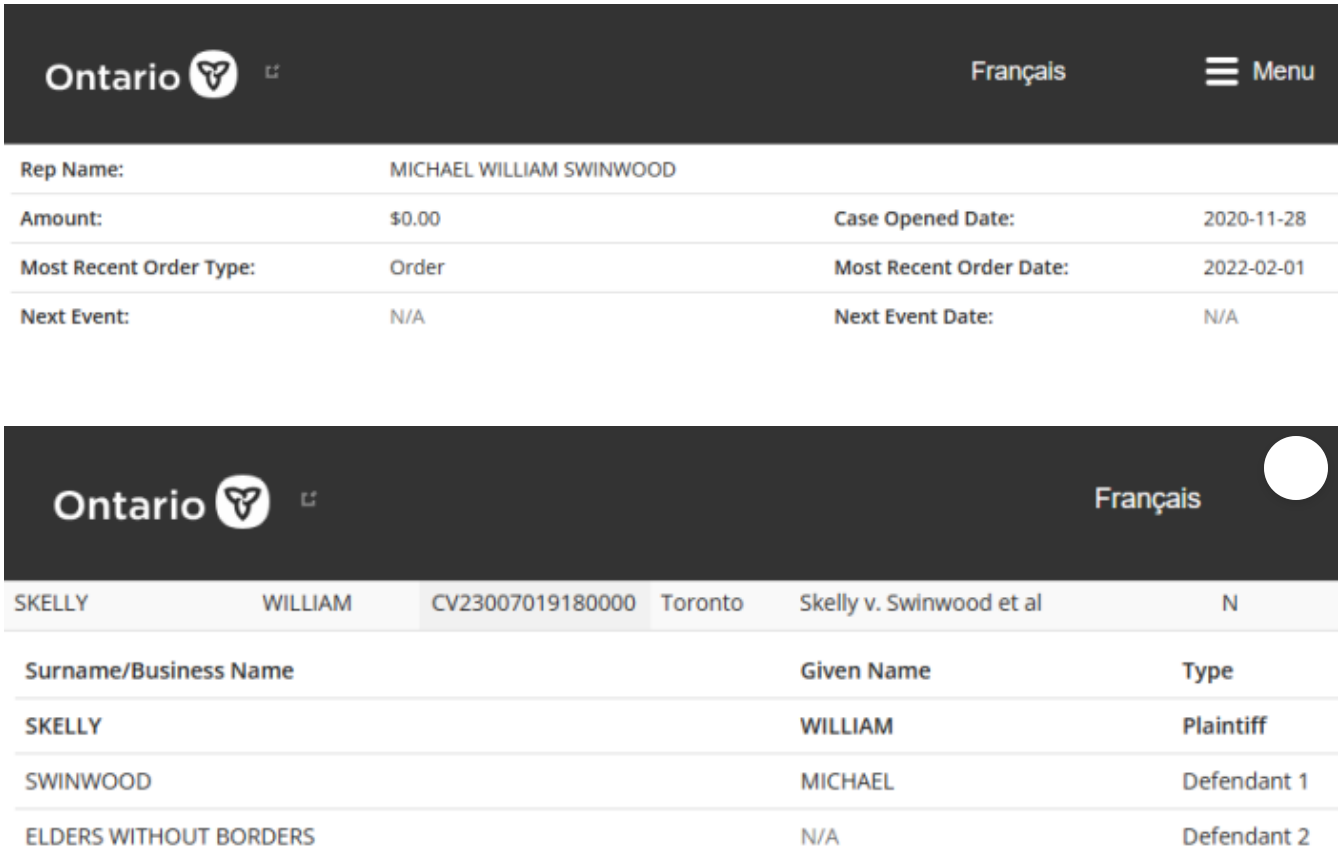
APRIL 13, 2024 BY RONNIE

Adam Skelly, Part 1: The Akbarali Decisions



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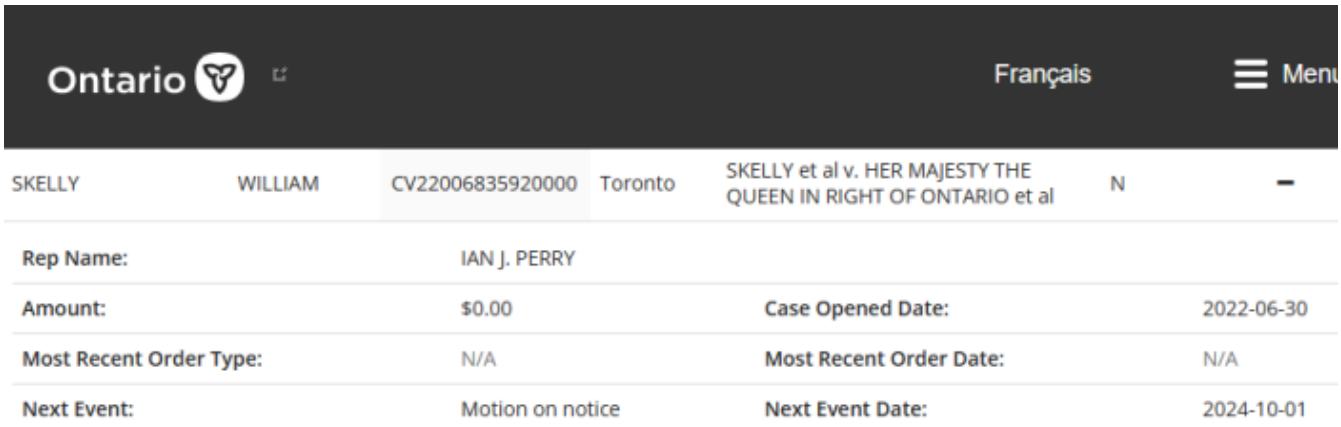
Rep Name:	MICHAEL WILLIAM SWINWOOD		
Amount:	$0.00	**Case Opened Date:**	2020-11-28
Most Recent Order Type:	Order	**Most Recent Order Date:**	2022-02-01
Next Event:	N/A	**Next Event Date:**	N/A

Ontario Français

SKELLY	WILLIAM	CV23007019180000	Toronto	Skelly v. Swinwood et al	N

Surname/Business Name	**Given Name**	**Type**
SKELLY	**WILLIAM**	**Plaintiff**
SWINWOOD	MICHAEL	Defendant 1
ELDERS WITHOUT BORDERS	N/A	Defendant 2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SKELLY WILLIAM CV22006835920000 Toronto SKELLY et al v. HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al N
Rep Name: IAN J. PERRY
Amount: $0.00
Case Opened Date: 2022-06-30
Most Recent Order Type: N/A
Most Recent Order Date: N/A
Next Event: Motion on notice
Next Event Date: 2024-10-01

This is the first of a multi-part series on William Adamson Skelly (a.k.a. Adam Skelly). He made national news back in the Fall of 2020 for refusing to bend the knee to the dictates of Doug Ford. This led to both civil and criminal cases in the months to come. His comically bad legal representation also generated attention.

He has another Application, this one to be heard over 3 days in October 2024. This is being organized by the Concerned Constituents of Canada, or CCOC. Since a lot of work was put together a few years ago, letting it go seemed like a major waste of time and money.

Now, the Government can — and most likely will — bring up the issue of mootness. Lawyers will claim that this is all old news, and that there are no orders in effect. Still, it would be nice to actually hear the case on its merits, especially as the Reopening Ontario Act wasn't ever taken down.

To begin, here was his run in with Justice Jasmine Akbarali back in 2021.

To make a long story short: the Government was successful in bringing a restraining order against Skelly and his business in December 2020. They did it on an expedited basis, with no real chance to defend. However, the ruling allowed for a "come-back Motion" to be brought. This would be Skelly's chance to show that he was in the right.

From Justice Kimmel's ruling:

[46] The applicant asked for its costs. The Crown argued that this was not actually an ex parte motion because they had provided notice, even though the court, by an earlier endorsement, had permitted the respondents not to respond. The respondents did not oppose the relief sought (except to raise procedural objections). ***The Crown had an onus to meet,***

irrespective of any position of the respondents*. If the Crown had proceeded ex parte, it concedes that it would not have been entitled to costs by virtue of Rule 57.03(3).*

[47] Although the Crown did provide notice, the respondents' participation has been deferred until the come-back motion. ***I have determined that any costs that might be recoverable by the applicant for this motion should be addressed in the context of that come-back motion if it proceeds.***

[48] The court's practice is to fix the costs of each step in a proceeding if possible. The applicant represented to the court that its bill of costs on a partial indemnity scale for the application amounted to $19,675.00. I can appreciate that there was a need for three counsel on a file such as this. This amount is within the realm of expected costs for an urgent application of this nature, although perhaps a little on the high side having regard to comparable cost awards that I was directed to in contested proceedings.

Since the Crown did (technically) provide notice, they were presumptively entitled to costs. However, Justice Kimmel decided — as an act of fairness — that Skelly should have the chance to make his case. Therefore, the option of a "come-back" Motion was granted. Sounds okay, right?

There were a number of problems that came up. First of all, the person(s) filing a Motion are referred to as the "Moving Parties", not the "Applicants". It seems that Skelly's lawyer, Michael Swinwood, wasn't even aware of what documents he was filing.

This is what Swinwood was filing.

Court File No. CV-20-00652216-000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant/Respondent

AND

ADAMSON BARBECUE LIMITED
AND WILLIAM ADAMSON SKELLY

Respondents/Applicants

FACTUM OF THE RESPONDENTS (APPLICANTS TO CONSTITUTIONAL QUESTION)

June 11, 2021

ELDERS WITHOUT BORDERS
Michael Swinwood (LSO #14587R)
237 Argyle Avenue
Ottawa, Ontario K2P 1B8

By contrast, the Ontario Government listed that Skelly and his restaurant were in fact the Moving Parties. These are the titles that *should* have been shown. Just because a Notice of Constitutional Question is included, doesn't mean that a Motion suddenly becomes an Application.

Court File No.: CV-20-00652216-000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant (Respondent on Motion)

- and-

ADAMSON BARBECUE LIMITED AND WILLIAM ADAMSON SKELLY

Respondents (Moving Parties on Motion)

FACTUM OF HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
(MOTION RETURNABLE JUNE 28-29, 2021)

June 18, 2021

ATTORNEY GENERAL OF ONTARIO
Civil Law Division

Look above. The first screenshot is from Swinwood, and the second from Ontario.

Had Skelly been initiating the entire proceeding by way of Judicial Review, then yes, he would have been considered an Applicant. Instead, he was filing a Motion to challenge an earlier ruling, but within the same case.

For Ontario Courts, Applications are governed by Rule 14.05. One can be started with any of Forms 14E, 14E.1, 68A or 73A. Motions are governed by Rule 37, and are initiated by Form 37-A. These are different forms, and completely different rules apply. Now, a Notice of Motion was filed, but it's baffling why Skelly would be listed as an "Applicant".

In June 2021, Justice Akbarali refused to hear the Motion, stating that she had no jurisdiction over the matter. She did, however, allow Skelly and his lawyer another attempt, if it were drafted properly.

Here is a very, very brief timeline of events.

November 28th, 2020: The Ontario Government files an emergency Application against Adam Skelly and his business in order to limit the amount and type of business that it can do. Although he is served with notice, this is done on such a short time frame that there wasn't really the chance to respond.

December 1st, 2020: The Ontario Government serves their Application Record.

December 2nd, 2020: The Ontario Court defers ruling on a decision on the status of Adamson Barbeque, until the following week.

December 11th, 2020: Justice Kimmel of the ONSC grants the Application from Ontario forcing the business to only operate (or not operate) within the parameters of the Reopening Ontario Act. While $15,000 in costs is awarded, it's deferred pending an anticipated "Comeback Motion" to be filed.

January 22, 2021: A Criminal Court Judge issues and order restricting what Skelly can post online, including any incitement or encouragement that the Ontario "restriction measures" not be followed.

February 1st, 2021: The Notice of Motion is filed, along with the first iteration of the Notice of Constitutional Question.

February 17th, 2021: Swinwood files a 27 page Notice of Constitutional Question. Rather than simply listing the issues to be considered, it's filled with argument, and reads more like a Factum.

March 9th, 2021: The Toronto Board of Health sues Skelly in an attempt to recoup the costs of paying over 100 police officers to enforce their mandates. There's another suit filed on March 10th, and it looks like they went after him twice (CV-21-00658431-0000 and CV-21-00658546-0000).

April 12th, 2021: Skelly and the various expert witnesses have their Affidavits sworn. Note, the documents themselves are attached below. As an aside, it's a bit disappointing that they all play along with the narrative that there is actually a virus.

May 25th, 2021: Matthew Hodge is cross examined on his Affidavit evidence. This would be the first of several days which he is questioned.

May 27th, 2021: Byram Bridle is cross examined on his Affidavit evidence.

May 31st, 2021: Skelly is cross examined on his Affidavit evidence.

June 8th, 2021: Swinwood amends the Notice of Constitutional Question.

June 11th, 2021: The Factum (arguments) are submitted on Skelly's behalf.

June 14th, 2021: The Factum is amended.

June 18th, 2021: The Government sends their responding Factum.

June 22nd, 2021: Reply Factum is sent on Skelly's behalf.

June 29, 2021: Justice Jasmine Akbarali declares that she has no jurisdiction to preside over the Motion brought by Skelly and Swinwood. It seems that Rules of Civil Procedure weren't followed, but another chance is given to do it properly. Costs for this Motion are to be deferred for a few weeks.

July 13, 2021: Justice Akbarali hands down a $15,000 cost award against Skelly for this Motion not being able to be heard. However, the original $15,000 order from December 2020 is deferred for 6 months, pending the outcome of the original matter.

Theories were rampant as to what happened with the June Motion. Some had said Swinwood was grossly incompetent.

Others suggested that Justice Akbarali was biased, and that the case was rigged. Now Swinwood *could* have simply redone the paperwork, but he didn't. However, without proof, this is all speculation.

October 2021: Despite the Toronto Board of Health suing Skelly and his business back in March, they don't actually serve anything for several months.

February 1st, 2022: Michael Swinwood (Skelly's lawyer), apparently still hasn't properly prepared the paperwork to challenge the 2020 decision. He never made another attempt. At

this point, the outstanding $15,000 is formally awarded against Skelly. Skelly wasn't given the opportunity to defend himself personally at the hearing.

June 2nd, 2022: RBC wins a financially crippling default judgement against Adamson BBQ. However, it appears to be against the business itself, and not Adam personally.

June 17th, 2022: Another Application is brought (this time with Ian Perry as counsel) against the Ontario Government. It once again challenges the Reopening Ontario Act.

June 14th, 2023: Ontario files a Notice of Motion for security for costs. In these types of Motions, one side is concerned that another won't (or can't) meet its financial obligations. This is a way around that. Typically, this leads to money or property being given to the Court, pending the outcome of the dispute. Ontario argues that it's necessary here.

June 28th, 2023: A $200,000 lawsuit for incompetence, negligence and malpractice is levied against Michael Swinwood, Skelly's now "former" lawyer. It's filed by Ian Perry.

August 11th, 2023: Ontario Government files Motion Record for security for costs Motion.

August 28th, 2023: Skelly files Responding Motion Record for security for costs Motion.

August 29th, 2023: Ontario Government files Factum for security for cost Motion.

September 6th, 2023: Reply Factum for security for costs Motion is filed.

September 8th, 2023: The hearing for the Motion for Security for costs takes place.

November 20th, 2023: Justice McAfee issues a $30,000 "security for costs" order against Adam Skelly. This means he'll have to put up the money in advance, as a sort of "deposit" in order to continue the latest application.

October 1st, 2nd, 7th of 2024: The Challenge to the R.O.A. is scheduled to be heard.

Now, what was so wrong with the come-back Motion that Swinwood had filed back in 2021? Aside from naming the Parties incorrectly, there were issues with the relief sought. Justice Akbarali mentioned this in the June 2021 decision.

a. An order staying the within proceedings until the determination of the Notice of Constitutional Question, dated February 1, 2021;

b. A request for a further case conference to establish timelines for the production of materials leading to the determination of the constitutional challenge;

c. A suspension of the s. 9 order [Justice Kimmel's order] due to the revocation of the EMCPA enunciated in s. 17 of the ROA;

d. Compensation for damages caused by the breaches of the Canadian Charter of Rights and Freedoms under s. 24(1) of the Charter;

e. Such further or other order as may be requested and the court deems just and proper.

But what's missing here? Skelly's lawyer isn't asking that the original restraining order be varied or set aside (terminated). That was the entire point of the come-back Motion is the first place.

From the Ontario Factum:

> 5. The Respondents' Notice of Motion does not seek any relief varying or setting aside the restraining order granted by this Court on December 4, 2020 under s. 9 of ROA. Nor does the Notice of Motion seek any declaratory relief. ***Neither does the Respondents' Amended Amended Notice of Constitutional Question dated June 8, 2021 make any reference to varying or setting aside this Court's order of December 4, 2020 or to declaratory relief***.

> 6. The ***only substantive relief sought in this motion is "An Order for compensation for damages caused by the breaches of the Canadian Charter of Rights and Freedoms*** under Section 24(1) of the Charter." This relief is not available, with the result that the motion must be dismissed.

> 7. First, ***damages are not available as relief on an interlocutory motion in an application. A claim for damages requires pleadings such as a statement of claim and a statement of defence***. There are no pleadings in this proceeding, and the only originating

process is the Crown's Notice of Application. Moreover, there has been ***no notice as required by s. 18 of the Crown Liability and Proceedings Act, 2019. Failure to give the required statutory notice renders this motion a nullity***.

37. As set out above at paras. 4-6, the ***only substantive relief sought in the Respondents' Notice of Motion is an order "for compensation for damages*** caused by the breaches of the Canadian Charter of Rights and Freedoms under Section 24(1) of the Charter." To the extent that the Respondents purport to seek other or additional relief in their factum, the Court should not entertain such claims.

38. Rule 37.06 provides that every Notice of Motion shall "state the precise relief sought" and "the grounds to be argued, including a reference to any statutory provision or rule to be relied on." The ***Respondents' Notice of Motion makes no reference to setting aside this Court's order of December 4, 2020 or to any declaratory relief***. Nor does it refer to any Rule or statutory provision apart from s. 24(1) of the Charter.

39. The purpose of Rule 37.06 is obvious. The Divisional Court has recently confirmed that it is an ***error of law to grant relief not sought in a Notice of Motion***, that due process underlies Rule 37.06, and that "Parties should not have to guess, speculate or intuitively understand what the issues to be decided are on a motion. In an adversarial litigation system, it is ***imperative that the litigants are made clearly aware of the case they have to meet." The Respondents should not be permitted to enlarge the legal issues or claim relief in their factum not sought in their Notice of Motion***, particularly since the Respondents' factum attempting to expand the issues was delivered after the evidence on the motion was adduced and the cross-examinations completed.

Justice Kimmel allowed a come-back Motion to be filed because it was anticipated that there would be significant challenges to the original order. Instead, there were requests for damages in the Notice of Motion. There's also the issue that a Court can't award damages on an intermittent (case is still ongoing) Motion.

Justice Kimmel permitted "Relief A", and instead, Swinwood asked for "Relief B".

How could Swinwood have screwed things up so badly?

And how come he never tried to fix it later?

Anyhow, more to come.

COURT DECISIONS:

(1) Skelly – Restraining Order Deferred Matter

(2) Skelly – Restraining Order Decision, December 2020

(3) Skelly – Criminal Court Limits What He Can Post Online

(4) Skelly – Judge Lacks Jurisdiction To Hear Case, June 2021

(5) Skelly – Costs Of $15,000 Ordered For Failed Motion

(6) Skelly – Costs From 2020 Kimmel Decision, Previously Deferred

(7) Skelly – Motion For Security For Costs Decision, September 2023

2020/2021 COURT DOCUMENTS:

(1) Skelly – Application Record Restraining Order (Michael Swinwood)

(2) Skelly – Notice of Constitutional Question (February)

(3) Skelly – Amended Notice Of Constitutional Question (June)

(4) Skelly – Book of Transcripts – Respondents (Applicants)

(5) Skelly – Book of Transcripts – Respondent on Motion – HMTQ

(6) Skelly – 2021 Motion Factum

(7) Skelly – 2021 Motion Amended Factum – Respondents (Applicants)

(8) Skelly – 2021 Motion Responding Factum

(9) Skelly – 2021 Motion Reply Factum

(1) Skelly – RBC Default Judgement Order

MALPRACTICE SUIT AGAINST MICHAEL SWINWOOD:

(1) Skelly – Swinwood Malpractice Statement Of Claim

NEW APPLICATION DOCUMENTS:

(1) Skelly – Notice Of Application (Ian Perry)

(2) Skelly – Costs – Notice of Motion – Moving Party (Respondent) HMTK

(3) Skelly – Costs – Motion Record-Moving Party (Respondent)

(4) Skelly – Costs – Applicant Responding Motion Record Security For Costs

(5) Skelly – Costs – Factum – Moving Party – HMK

(6) Skelly – Costs – Responding Factum Applicants Skelly et al

EXPERT REPORTS:

(1A) Skelly – Byram Bridle Resume

(1B) Skelly – Byram Bridle Expert Report

(1C) Skelly – Byram Bridle Expert Reply Report

(2A) Skelly – Douglas Allen Resume

(2B) Skelly – Douglas Allen Expert Report

(2C) Skelly – Douglas Allen Expert Report

(3A) Skelly – Gilbert Berdine Resume

(3B) Skelly – Gilbert Berdine Expert Report

(3C) Skelly – Gilbert Berdine Expert Reply Report

(4A) Skelly – Harvey Risch Affidavit

(4B) Skelly – Harvey Risch Expert Report

(5A) Skelly – Joel Kettner Resume

(5B) Skelly – Joel Kettner Expert Report

(5C) Skelly – Joel Kettner Expert Reply Report

(6A) Skelly – William Briggs Resume

(6B) Skelly – William Briggs Expert Report

(6C) Skelly – William Briggs Expert Reply Report

ADAM SKELLY, CANADA, CANADIAN DECISIONS, UN/WHO, VACCINES